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SERVICE DATE - OCTOBER 24, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-124 (Sub-No. 2)]

Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME

[STB Docket No. AB-279 (Sub-No. 3)]

Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME

On October 6, 2003, the Trustee of the Bangor and Aroostook Railroad Company (BAR), et al. (the Trustee), filed with the Surface Transportation Board an application under 49 U.S.C. 10903<sup>1</sup> seeking: (a) in STB Docket No. AB-279 (Sub-No. 3), the adverse (involuntary) discontinuance of certain trackage rights acquired by the Canadian National Railway Company (CN) from BAR and its wholly owned subsidiary, the Van Buren Bridge Company; and (b) in STB Finance Docket No. AB-124 (Sub-No. 2), the adverse (involuntary) abandonment of the operating easement acquired by a CN

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<sup>1</sup> The Trustee contends that the bankruptcy law at 11 U.S.C. 1170 applies to this application, meaning that the Board's decision would constitute an advisory report to the Bankruptcy Court. The matter is currently before the United States District Court for the District of Maine.

subsidiary, the Waterloo Railway Company (Waterloo), over the same lines.<sup>2</sup> The lines run between Madawaska, ME, and the Canadian border, and serve a mill owned by Fraser Papers Inc. (Fraser) at Madawaska, ME. The lines are now owned by the Montreal, Maine & Atlantic Railway, Ltd. (MMA), which purchased them from the estate of the bankrupt BAR on January 9, 2003. They are fully operational rail lines used by CN to serve the plant of Fraser at Madawaska.

The Trustee seeks to terminate CN's authority to serve Fraser over the lines. This would leave MMA as the only carrier with authority to serve that shipper over the lines. For additional background information, see the Board's decision served on June 25, 2002, in Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company and Van Buren Bridge Company, STB Finance Docket Nos. 34014, et al.

The Trustee maintains that termination of CN's authority to serve Fraser, leaving MMA as the serving carrier, is required by the "present or future public convenience and necessity" under 49 U.S.C. 10903. The Trustee contends that, under either 49 U.S.C. 10903 or 11 U.S.C. 1170, the public interest will be served by discontinuance of the CN

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<sup>2</sup> The lines involved in the trackage rights and easement are more precisely described as follows: (1) a line between approximately Milepost (MP) 0.0 at Madawaska, ME, and approximately MP 22.72 at Van Buren (Canadian Junction), ME; and (2) a line between approximately MP 0.0 at Van Buren (Canadian Junction), ME, and approximately MP 0.31 at the United States-Canada border, a total distance of approximately 23 route miles in Aroostook County, ME. The lines include the stations of Madawaska (MP 0.0), N CL Sign Madawaska (MP 1.25), Saint David (MP 4.20), and Grand Isle (MP 8.66) and traverse Postal Service ZIP Codes 04756, 04773, 04746, 04749, and 04785.

trackage rights and abandonment of the Waterloo easement, because the potential harm to the BAR estate, the new owner of the former BAR system (MMA), and its shippers and the communities it serves from the continued existence of the CN trackage rights and Waterloo easement substantially outweighs the potential harm to Fraser and CN from discontinuance of the trackage rights and abandonment of the easement. In adverse abandonment and discontinuance proceedings, the Board considers whether to withdraw its primary jurisdiction to permit the operation of state, local, or, as here, other Federal law to take affect. See Modern Handcraft, Inc. – Abandonment, 363 I.C.C. 969 (1981); Kansas City Pub. Ser. Frt. Operations – Exempt. – Aban., 7 I.C.C.2d 216 (1990).

The applicant's entire case for discontinuance and abandonment was filed with the application.<sup>3</sup> Any interested person may file with the Board a statement protesting or commenting on the Trustee's application for adverse abandonment and discontinuance. Interested persons who wish to participate actively and fully in these proceedings should submit their entire case in the form of argument and verified witness statements containing detailed evidence and the information required by 49 CFR 1152.25(a)(1), to the extent that it is needed or appropriate in this type of proceeding.<sup>4</sup> Those who do not

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<sup>3</sup> In decisions served on September 25, 2002, and October 23, 2002, the Board approved exemptions from statutory provisions and waiver of regulatory requirements that were designed for typical abandonment and discontinuance proceedings, where carriers voluntarily seek to terminate a service obligation that protestants may wish to preserve, but were not intended to apply to adverse abandonment or discontinuance proceedings.

<sup>4</sup> This provision was developed for typical abandonment proceedings, where  
(continued...)

wish to participate fully by the filing of witness statements may file comments. Those submitting detailed evidence or comments may also submit the information described in 49 CFR 1152.24(a)(2), to the extent that it is needed or appropriate (see footnote 4, above).

The interests of employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

All filings in response to this notice, and every document filed with the Board in these proceedings, must identify these proceedings by their docket numbers, i.e., STB Docket Nos. AB-124 (Sub-No. 2) and AB-279 (Sub-No. 3), and should be served on: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; (2) Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036-1221 [Trustee's representative]; (3) William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2875 [CN's representative]; and (4) Carolyn F. Corwin, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004-2401 [intervener MMA's representative]. The original and 10 copies of all comments or protests shall be filed with the Board, together with a certificate of service.

All comments or protests must be filed by November 20, 2003.

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<sup>4</sup>(...continued)

carriers voluntarily seek to terminate a service obligation that protestants may wish to preserve, rather than proceedings where, as here, the serving carrier (CN) seeks to continue its right to provide service and service by another carrier (MMA) would continue even if the application is granted.

Persons seeking information concerning the filing of statements may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. [Assistance for the hearing impaired is available through the Federal Information Relay Services (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at  
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Decided: October 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary